IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.9763 of 2006

Date of Decision:9.11.2006

Sukhbir Singh and Another

....Petitioners.

Versus

State of Haryana and others

...Respondents.

CORAM : Hon'ble Mr.Justice M.M.Kumar.
Hon'ble Mr. Justice M.M.S.Bedi.

Present:- Mr.Ravi Verma, Advocate
for the petitioners.

Mr. Harish Rathee, Sr. DAG Haryana.

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M.M.KUMAR, J.(ORAL)

The prayer made by the petitioner in this petition is for quashing order dated 17.3.2005 (Annexure P-4) and subsequent orders dated 4.5.2006 (Annexure P-7 and Annexure P-8), passed by respondent No.3 i.e. Additional District Education Officer, Jhajjar. According to the afore-mentioned order, the military service rendered by the petitioner during the period of second emergency has been withdrawn and their pay have been reduced with retrospective effect. The payment of excess amount paid to the petitioner has also been ordered to be recovered from their salary. Further prayer is also made that a direction be issued to the respondents to disburse the salary to the petitioners on the basis of the

orders dated 23.8.2002 and 31.1.2002 (Annexures P1 and P2) respectively, granting them the benefit of second emergency in consonance with the provisions of Rule 4 of Punjab Govt. National Emergency (Concession) Rules, 1965.

Mr. Ravi Verma, learned counsel for the petitioners at the out set states that the petitioners do not want to press the petition for their payment of the financial benefits for the military services rendered by them during second emergency. He, however, claims that on 23.8.2002 and 31.1.2002, the orders Annexures P1 & P2 were passed by the respondent without any misrepresentation on part of the petitioners. According to learned counsel for the petitioners in such a situation the judgment of the Hon'ble Supreme Court in Sahib Ram Vs. State of Haryana, 1995 (1) suppl. SCC 18,would be applicable and no recovery could be effected from the petitioners.

Having heard learned counsel for the parties we are of the view that the order Annexures P1 and P2 dated 23.8.2002 and 31.1.2002 were passed without any misrepresentation or fraud by the petitioners. In pursuance thereto, the petitioners have enjoyed the benefits of annual increments granted to them for the military services rendered by them during second emergency. However, the benefits have been rightly withdrawn by the respondents as the petitioners have not been considered entitled to the benefit of second emergency. The submissions made by learned counsel for the petitioners that no recovery could be effected is meritorious and deserves to be accepted. The afore mentioned submission is fully supported by the judgment of Hon'ble the Supreme Court in Sahib

Ram's case (supra). Accordingly, the order Annexure P4 dated 17.3.2005 and Annexures P7 and P8 dated 4.5.2006 are liable to be quashed to the extent of effecting recovery from the petitioners.

In view of the above the impugned orders dated 17.3.2005 (Annexure P4) and dated 4.5.2006 (Annexures P7 and P8) are quashed to the extent of effecting recovery of the amount already paid to them in pursuance to the earlier order dated 23.8.2002 (Annexure P1) and 31.1.2002 (Annexure P2). The petitioners shall be at liberty to seek refund of the amount of gratuity deposited by them with the respondents which they had received from the Army in order to earn service benefit arising out of service rendered during second emergency.

The writ petition is disposed of in the above terms.

(M.M.KUMAR)
JUDGE

Nov 9, 2006. **(M.M.S.BEDI)**
Reema. **JUDGE**